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Subcommittee on Regulatory Affairs

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on Reauthorization of the Paperwork Reduction Act

Good afternoon, Mr. Chairman and Members of the Subcommittee. Thank you for inviting me to testify today on the Reauthorization of the Paperwork Reduction Act (PRA or Act). As the Administrator of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) from 1993 to 1998, I was very involved in the discussions and decisions about the last reauthorization of the PRA, which resulted in the Act which was signed by President Clinton on May 22, 1995. I also was responsible for implementing the Act (before and after the 1995 revisions) during my tenure as Administrator and later as the Deputy Director of Management of OMB from 2000 to January 2001.

I appreciate the efforts being undertaken by this Subcommittee to improve the operation of PRA and better promote the goals of the Act. With the suggestions discussed below, and assuming a clean bill, I fully endorse reauthorization of the PRA.

The reasons for reauthorization are obvious and, I believe, not in dispute. OIRA has been given and is responsible for many significant and important government functions. These include, among other things, the review and approval of agency information collection requests (ICRs), federal statistical activities, record management activities, and information technology and information policy generally. OIRA's record has been consistently strong in these areas, and reauthorization of appropriations for the office is clearly warranted.

In your invitation to testify, you specifically directed my attention to the fact that the government-wide reduction goals set forth in the 1995 Act have not been realized, and you further noted that the burden imposed on the public by ICRs has in fact increased 33% since 1990. In this context, you requested me to offer any comments or suggestions about possible ways to achieve real burden reduction.

The term "burden" and the stated goal of "reducing the burden" imposed on the public through government sponsored information requests appears throughout the 1995 Act. It is the first subject identified in the enumerated purposes of the Act (Sec. 3501):

"The purposes of this chapter are to (1) minimize the paperwork burden for individuals, small businesses, educational and non-profit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government."

And the first task assigned to the Director of OMB in Section 3505 is to achieve at least a specified government-wide percentage reduction of the information collection burden.

The total burden imposed by government information requests, as it has been calculated by OMB and others, is roughly 8 billion hours. That number is large—very large-- and it has continued to grow. There is therefore a natural impulse to want to take whatever action is necessary to reduce it. But, with respect, I think it is far more complicated than that.

First, I am concerned that references to total burden hours and their increases (or decreases were that to occur) is somewhat misleading. My comment rests on the premise that not all the 8 billion burden hours are the same. At this time of the year, we are painfully aware of the “burden” imposed by one particular agency – the Internal Revenue Service (IRS). Yet we must recognize that the burden hours attributable to IRS forms are of a wholly different sort of burden than the burden hours represented by, for example, filling out a form for a small business or a student loan, or to obtain veterans’ benefits or social security disability payments, all of which are also included in the calculation of total burden hours. The IRS forms provide the basis for the collection of revenue by the Federal Government, while the latter forms provide the basis for the affected individual to obtain benefits from the Federal Government. I am not saying that the latter forms should not be as streamlined and simplified as possible so that the burden on the applicant is reduced to a minimum, without sacrificing information essential for programmatic accountability; after all, we want some degree of confidence that only those eligible for a program are receiving payments and that the agency has sufficient information to monitor and evaluate whether the program is achieving its objectives. The point I want to make is that calling the paperwork that is necessary for a benefits program a “burden,” and counting the hours required to fill out the forms to obtain the benefits as part of the total burden imposed on the American public, masks the qualitative difference between these forms and those imposed by the IRS.

Separating out the IRS burden hours from all others is important because, as noted in your invitation to testify, the IRS’s parent agency -- the Department of Treasury -- accounts for over 80% of the total paperwork burden. This number is affected to some extent by the large number of people who fill out the Form 1040 or the simplified version Form 1040EZ. But the large IRS burden numbers are also a factor of the complexity of the Internal Revenue Code and the very complicated (and often very detailed) forms that the most sophisticated corporations and their legions of accountants and lawyers fill out to obtain special tax treatments which Congress has decided is not only appropriate but also desirable. Consider the form for accelerated depreciation or the one for oil and gas depletion allowances. Surely those who spend the hours filling out those forms have made a calculation (however informal) that the burden of doing the paperwork is outweighed (often greatly outweighed) by the benefit of obtaining the resulting tax advantage. Thus, even to treat the burden hours for the individual struggling through the 1040EZ the same as the hours spent by the trained lawyers and accountants is to come up

with a total burden number that is not very informative about the nature and/or effect of the problem.

In any event, with 80% of the total burden attributable to the IRS, it is difficult to see how there can be meaningful reduction in total hours without dramatic changes to the tax code. This would be true even if Congress were to determine to cut in half or even in third all the non-IRS burden hours. And, it is fair to ask, under that scenario, what would be eliminated?

I have already mentioned the forms for small business or student loans, for veterans' benefits, and for social security disability payments, which are only a few of the forms required to establish eligibility (and accountability) for a wide variety of government programs approved by the Congress and signed into law by Presidents of both parties to help the American people. As noted, the hours spent filling out those forms are included in the total burden hours. Also included are the hours attributable to the requirements with respect to nutrition labeling for food, which provide consumers with data for informed choices affecting their health (and possibly their safety). These labels are a prevalent form of what are called "third party disclosures."

There are also third party disclosure requirements whereby employers are to post information announcing the presence of toxic chemicals in the workplace, and pharmaceutical companies must supply package inserts to explain the correct use of a drug and provide other relevant medical information, to name just two. Again, this form of information is included in the total burden hours. And this raises another issue -- namely, whether such information requirements -- however burdensome -- may be the least restrictive, least onerous alternative? Consider the two examples just mentioned. Are not the disclosure requirements less burdensome, less costly, less intrusive than if the government were to ban the toxic chemicals from the workplace or to require doctors or pharmacists to read the medical insert information to all patients? In fact, it is not an infrequent occurrence that disclosure requirements are the least restrictive, and therefore the preferred, form of regulation.

Thus, while it is a legitimate concern that total burden hours are increasing contrary to the express purpose of the Act, that alone is not reason to legislate a government-wide reduction of government sponsored information requests. Rather, I would recommend that the Subcommittee first disaggregate the total burden hours and identify with some precision where (and why) the burden is being imposed. With that information, there may well be avenues for reducing the burden that are now obscured by the emphasis on total numbers.

More importantly, while burden is one side of the equation, it is not -- and should not be -- the only consideration. The 1995 Act reflects another purpose. Section 3501 (2) identifies as a purpose of the Act the need to "ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by and for the Federal Government." And subsection (4) speaks of the need to "improve the quality and use of Federal information to strengthen

decisionmaking, accountability, and openness in Government and society.” This side of the equation has, I fear, gotten very short shrift in the ongoing debate about the PRA.

The benefit or utility side of the equation is not a new ingredient. The very earliest attempts to get a handle on government information collections recognized that information was needed by federal agencies for informed and rational decision making, and further that much of the information collected by the government was subsequently disseminated to the public – for example, weather information, census data (stripped of personal identifiers), and economic indicators. This information is highly valued by industry and the academy, which in turn evaluates, analyzes, or interprets the information collected by the government, and often eventually uses it to enhance our safety, decide on marketing strategies or make investment decisions.

It has long been recognized, both by the Legislative and the Executive Branches of government, that information is valuable – indeed, essential -- to decisionmaking in both the private and the public sectors. While this Subcommittee is here considering how best to reduce the burden of government information collections, other Committees in both Houses of the Congress are considering new legislation that would require new information collections – whether to prevent fraud in government programs, to enable better informed policy choices, or to enhance national security. Indeed, OMB’s recent reports to the Congress have shown that new statutory mandates have outpaced the burden reduction efforts the agencies have been making in areas within their discretion. This should not be surprising. For we are, after all, in the information age, and without reliable, relevant information, we would all be less well off.

Yet, as I noted earlier, in discussions about the PRA, there has been very little attention to the benefits of information collection, and regrettably the drum beat of “reduce the burden” sends a message to both the agencies and to OMB that they will satisfy Congressional concerns only if they shut down new surveys, close off new inquiries, and cut back new requests for information. So far as I know, there has been no empirical research on this issue, but I am aware of anecdotal information to the effect that agencies don’t even bother to send new information collection requests to OMB for approval, unless they are statutorily mandated, because those who favor gathering the information believe that the pressure is so great from the reduce-burden side of the field, that their effort to proceed will be futile. If this is an accurate characterization of what is happening, I believe it is a most unfortunate development, and that your Subcommittee would do well to address it and right the balance – to speak of the utility of information in the same breath as you speak of reducing the burden.

For these reasons, and because the percentage government-wide reduction targets have been singularly ineffective in reducing burden, I would recommend that the legislatively imposed reduction goals in the 1995 Act be removed with the reauthorization. One size does not fit all, and a flat government-wide ordained cut will not achieve the desired results. There are, however, several additions and/or modifications to the 1995 Act which I believe would be not only appropriate but also highly salutary.

A modest measure would be to emphasize what is already referenced but not made explicit in the Act (see, e.g., Section 3501(7)) (although it has been the subject of subsequent legislation by the Congress), and that is encouraging the greater use of information technology in this area. During the last few years of the Clinton Administration, we saw significant progress as a result of agencies' increased reliance on electronic filings to reduce burden. The IRS 1040EZ was just beginning to be made available on line, but it was clear that the burden on many tax filers would be reduced significantly as more and more taxpayers use electronic filings. There were many other agencies, including, as I recall, the Environmental Protection Agency, the Securities and Exchange Commission, and the Social Security Administration, which were beginning to use technology to simplify filing requirements for individuals and businesses; these projects had the added benefit of making it easier for the agencies to compile and analyze the data collected, and also for the data collected to be disseminated to the public. I understand that the current Administration has taken some of our ideas and run with them, making very good progress in the areas of E-grants, E-procurement, and E-government generally. To be successful, however, these efforts require attention to security and privacy concerns, and they often require a significant up-front capital investment. Congress should be persuaded to support the requests for such funds, in the name of both the utility of information and the reduction of burden.

In addition, I would recommend several steps that would streamline the information clearance approval process for both the agencies and OMB. Starting first with OMB, there are a lot of ICRs which are simple, routine, straightforward and noncontroversial. Under the 1995 Act, OMB is nonetheless obliged to review them all — a labor intensive exercise that produces little, if anything, to show for it. I would urge this Subcommittee to replace that blanket obligation with an authorization for OMB to waive the right to review those ICRs which are not “significant.” This is the distinction that was made in Executive Order 12866 (signed on September 30, 1993) concerning OMB review of regulations. There is a four-part test to define “significant regulatory action.” (Section 3(f)) This Executive Order has been in effect for over 12 years and there has been virtually no dispute — either between OMB and the agencies or between the public and the agencies -- as to what constitutes a “significant regulatory action.” Analogous criteria could be drafted by OMB — referencing the number of respondents affected, the estimate of the burden hours, the complexity of the proposed ICR, the nature of the issues addressed, and the like. OMB would then be able to devote its limited resources to those ICRs that really matter. That has been the experience under the Executive Order for reviewing regulations; there is every reason to believe the same would occur in this case.

Another provision to consider revising is that having to do with approval of renewals. The 1995 Act provides that OMB “may not approve a collection of information for a period in excess of 3 years.” (Section 3507(g)) At the end of that period, the agency can (and most frequently does) seek an “extension” of the approval for another 3 years. I understand that roughly 35% of OMB's caseload consists of such requests for renewals, and I further understand that virtually all requests for renewals are

granted. Seems like a lot of work for very little difference. There is a provision in Section 3507 (h) governing this situation, which states that the agency shall “include an explanation of how the agency has used the information that it has collected.” (Section 3507(h)(1)(B)) I would urge this Subcommittee to consider authorizing OMB to exercise discretion with respect to the length of the renewal period depending on the agency’s submission on this issue. This would provide an agency an incentive (not now present) to document how the information collection is useful in enabling the agency to fulfill its statutory mandate. The stronger the showing, the greater the period of an extension – going to 5 or 7 or even 10 years.

Another aspect of the OMB clearance process that warrants reconsideration is the provision that, after OMB has received the package of materials from the agency, it provide an additional 30-day period for public comments (see Section 3507 (b)). (I say additional because the agencies will have already provided a 60-day comment period under Section 3506(c)(2)). These provisions in the 1995 Act were based on the idea that public participation in the process is good (an idea that I strongly endorse) and that therefore more public participation would be even better. The latter hypothesis has not proven to be the case. I understand that there has not been a noticeable up tick in the amount of public comments received by the agencies and, more to the point, that public comments during the OMB comment phase are few and far between. This may be because this is a rather esoteric area, or the government watchdogs have more important things to focus on, or because people do not believe that the agencies (or OMB) will take their comments seriously and do anything about them. Whatever the reason, the extended public comment period, including specifically what has been called the “second bite at the apple” – i.e., the 30-day period during OMB review -- is apparently not producing the intended benefit. By eliminating Section 3507(b), the process would be simplified and streamlined.

Some may respond to my suggestions by pointing out that the objective is to protect the public, not OMB, and they would ask, “How will the public benefit from these changes to the Act”? “If we make it easier for OMB to review ICRs,” they will say, “won’t there just be more of them and thus increase the burden on the public”? Not necessarily. In fact, based on my experience, I would assert the contrary: by allowing OMB to separate the wheat from the chaff, it can then concentrate on the ICRs that really matter and OMB’s involvement can make a positive difference. Again, this was our experience with Executive Order 12866 and regulatory review; by focusing review on those regulations that were truly important, OMB review was more effective to the benefit of the American people.

With respect to the agencies, I have less direct experience and therefore less to contribute. Nonetheless, there is one feature of the agency review of ICRs that concerns me. In the 1995 Act, we wanted to ensure that there was a meaningful review of proposed ICRs within the agency – even before they were sent to OMB – and we thought it important that that review be done by someone not directly involved in the development of the ICR itself, because the programmatic office responsible for the ICR will inevitably be invested in gathering all the information that might be useful in

enabling the agency to fulfill its statutory mandate. We were looking for an entity that was somewhat detached and somewhat dispassionate, but at the same time knowledgeable about the agency's mission and with sufficient standing and clout to be able to challenge, if necessary, the programmatic office. At the time, we were beginning to empower the Chief Information Officers (CIOs) within each of the major agencies and, given the nexus with information, we thought it best to designate the CIO as the one under Section 3506 (a)(3) to:

“head an office responsible for ensuring agency compliance with, and prompt and efficient and effective implementation of the information policies and information resource management responsibilities established under this chapter, including the reduction of information collection burdens on the public.” (emphasis added)

The CIO's responsibilities with respect to “the collection of information” and the “control of paperwork” are spelled out more specifically in Section 3506 (c).

During our tenure, the CIOs had their hands full, first in organizing their offices and then, most importantly, in addressing the Y2K problem. Over the last five or six years, some CIOs have taken very seriously their responsibilities with ICRs; others have not been interested in, or able to do, the job effectively and, as a result, the certification process relied on by the drafters of the 1995 Act (see Section 3506(c)(3)) has had less than the intended beneficial impact. Accordingly, I believe this Subcommittee should consider reiterating the objective – namely, creating or designating an entity that is sufficiently independent of program responsibility but sufficiently familiar with the agency's mission to evaluate fairly whether proposed collections of information should be approved (or modified) – but afford the agencies flexibility in designing and implementing such an office. This Subcommittee could further provide that if an agency selects an entity other than the CIO, approval of OMB would be required.

I thank you again for inviting me to testify on this important subject, and I would be happy to try to answer any questions you may have.